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C.S. 1244

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

Single Bench

S.A. No.324 /2004

APPELLANT/ PLAINTIFF : Radheshyam Sahu, S/o. Manrakhan Sahu, aged about 28 years, R/o. Village Siyanmara, Tahsil Gunderdehi, District Durg (C.G.)

VERSUS

RESPONDENTS DEFENDANTS :1. Ansuiya Bai, aged about 33 years

2. Gulabchand, D/o. Ansuiya Bai Aged about 3 years, Minor through natural guardian mother Ansuiya Bai, Both R/o. Village Siyanmara, Tahsil Gunderdehi, District Durg (C.G.)

P.R No. 1242 T.14
Presented by Shri D.D. Baghel
dated 12-6-04

SECOND APPEAL U/S. 100 OF CODE OF CIVIL PROCEDURE

AGAINST THE JUDGMENT AND DECREE DATED 11.07.2003 PASSED BY THE VIIth ADDITIONAL DISTRICT JUDGE (FAST TRACK COURT) DURG (C.G.) IN CIVIL APPEAL NO. 15-A/2003 CONFIRMING THE JUDGMENT AND DECREE OF THE TRIAL COURT DATED 13.11.1995

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

आदेश पत्रक

मामला क्रमांक ....SA...324/04 मन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11/03/2005

Shri D.N.Prajapati, counsel for the appellants.

Shri Ajay Shrivastava, counsel for the respondents.

Heard on M.C.P. No. 797/2004 for condonation of delay in filing the appeal.

Learned counsel for the appellant submits that the appeal could not be filed within time as the counsel appearing in the lower Court did not send the information regarding the impugned judgment and decree and file of the case was also misplaced and as such the appellant could not make arrangement for filing the same. It is only after the original file was traced after a long search, the appeal was filed during summer vacation.

Learned counsel for the respondent submits that the ground of file being misplaced, taken by the appellant for condonation of delay in filing the appeal was not bonafide and sufficient as he could reconstruct the file by getting the original record.

I have heard counsel for the parties.

The only ground taken in the application for condonation of delay in filing the appeal is that the appellant was not intimated by the counsel regarding dismissal of the appeal and further that file could not be traced even after long search. According to the counsel for the appellant, the file was traced only after a long search during summer vacation and immediately thereafter the appeal was filed along with the application for condonation of delay.

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक ....S.A. 324/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित –2–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

This submission made by the counsel for the applicant is not acceptable.

Learned counsel for the respondent submits that there is no explanation as to when the file was traced and as to why the file could not be reconstructed and as such the application under Section 5 of the Limitation Act is liable to be dismissed.

After hearing counsel for both the parties, I am of the view that the appellant has failed to explain the delay of 276 days properly in filing the appeal and as such the application for condonation of delay is liable to be dismissed and it is dismissed.

Consequently, the appeal stands dismissed.

Sd/-
Dhirendra Mishra
Judge